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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of MARILYN and JOHN W. SWAIN, JR.	
MARILYN SWAIN, Respondent, v. JOHN W. SWAIN, JR., Appellant.	E048798 (Super.Ct.No. VFLVS037285) **OPINION**

APPEAL from the Superior Court of San Bernardino County. Teresa S. Bennett, Judge. Affirmed.

John Swain, in pro. per., for Appellant.

No appearance for Respondent.

John W. Swain, Jr., appeals from a judgment making a property division between him and his ex-wife, Marilyn Swain. John is in propria persona. His brief is not entirely

coherent. To the extent that we can make heads or tails of it, however, it fails to demonstrate any reversible error. Hence, we will affirm.

I

ISSUES

We begin by defining the issues that John is raising on appeal.

A brief must "[s]tate each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of authority . . . ." (Cal. Rules of Court, rule 8.204(a)(1)(B).) "The purpose of requiring headings and coherent arguments in appellate briefs is 'to lighten the labors of the appellate courts by requiring the litigants to present their cause systematically and so arranged that those upon whom the duty devolves of ascertaining the rule of law to apply may be advised, as they read, of the exact question under consideration, instead of being compelled to extricate it from the mass.' [Citation.]" (*Opdyk v. California Horse Racing Bd.* (1995) 34 Cal.App.4th 1826, 1830, fn. 4.)

The first section of John's argument is headed simply, "ARGUMENT." (Boldface omitted.) Under this heading, he appears to be arguing primarily that the trial judge was biased. We deem this contention forfeited (although we will also discuss it on the merits, in the alternative, in part III, *post*).

This section is followed by a clump of five headings and subheadings, all run together, with no argument under any of them except the last. Taken as a whole, they basically assert that the trial court did not consider all of the evidence and/or considered

inadmissible evidence, and, as a result, it made a property division that was "detrimental" to John.[1] We will consider this contention in part II, *post*.

Finally, this is followed by a single heading that states: "The court abused its discretion in refusing the respondent (appellant's) responsible request for equal protection by refusing Mrs. Swain's request for awards." We have no idea what this means. Moreover, there is no argument under it. Accordingly, we deem this contention (whatever it may be) forfeited.

If and to the extent that John intended to raise any other contentions, we reject them as not properly briefed. (*Loranger v. Jones* (2010) 184 Cal.App.4th 847, 858, fn. 9.)

II

"DETRIMENTAL" PROPERTY DIVISION

In broad general outline, the trial court was required to confirm the separate property of each spouse to that spouse (Fam. Code, §§ 2010, subd. (e), 2650) and to divide the community property equally (Fam. Code, § 2550).

John has not shown that the trial court's property division violated these principles or was erroneous in any other way. He argues that the trial court "failed to perform the required 'best interests' analysis." (Interior quotation marks corrected.) Unlike child custody, however, property division is not governed by a "best interest" standard.

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[1] A couple of sentences in the "ARGUMENT" section of the brief seem to allude to a similar point.

Similarly, he argues that the property division was "detrimental" to him. However, there is no rule of law against this.

John seems to be arguing that Marilyn committed fraud of some kind. He claims that exhibits that were in evidence proved this, or else the trial court excluded exhibits that would have proved this.

John has forfeited this argument by failing to provide us with an adequate record. We do not have any of the trial exhibits. Admittedly, "all exhibits . . . are deemed part of the record . . . ." (Cal. Rules of Court, rule 8.122(a)(3).) Even so, we have no way of reviewing any exhibit unless it is either included in the clerk's transcript (*ibid*.) or transmitted to us (Cal. Rules of Court, rule 8.224). That is particularly true in this case, as the exhibits were returned to the parties, by stipulation, at the end of the trial. Finally, while we do have a reporter's transcript, it is missing half a day of testimony. "It is well settled, of course, that a party challenging a judgment has the burden of showing reversible error by an adequate record. [Citations.]" (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575.) Because John has failed to provide such a record, we have no occasion to consider the merits of this issue. (*Ibid*.)

To the extent that John is claiming that he conclusively proved fraud, he has also forfeited this claim by failing to discuss *all* of the evidence introduced at trial. "[T]he reviewing court starts with the presumption that the record contains evidence sufficient to support the judgment; it is the appellant's affirmative burden to demonstrate otherwise. [Citations.] The appellant's brief must set forth *all* of the material evidence bearing on

the issue, not merely the evidence favorable to the appellant, and must show how the evidence does not sustain the challenged finding. [Citations.]" (*Cequel III Communications I, LLC, v. Local Agency Formation Com. of Nevada County* (2007) 149 Cal.App.4th 310, 329, fn. 7.)

To the extent that John is claiming that the trial court erroneously excluded evidence, he has also forfeited this claim by failing to support it with a coherent argument supported by appropriate citations. (*Nein v. HostPro, Inc.* (2009) 174 Cal.App.4th 833, 855.) He does not explain why his evidence was admissible or how the trial court erred by excluding it.

III

BIAS OF THE TRIAL JUDGE

John forfeited any contention that the trial court was biased by failing to file a disqualification motion below. (Code Civ. Proc., § 170.3, subd. (c); *People v. Guerra* (2006) 37 Cal.4th 1067, 1111, disapproved on other grounds in *People v. Rundle* (2008) 43 Cal.4th 76, 151.) He argues that the trial court "took advantage" of him because he was in propria persona and did not know how to go about filing a disqualification motion. He complains that it never offered him any "legal help." It had no obligation, however, to do so. "[S]elf-represented parties are entitled to no greater consideration than other litigants and attorneys. [Citation.]" (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830.)

John additionally forfeited this contention by failing to file a prompt writ petition. A statutory claim of judicial bias must be raised by writ; it cannot be raised on appeal. (Code Civ. Proc., § 170.3, subd. (d); *People v. Brown* (1993) 6 Cal.4th 322, 335-336; *Roth v. Parker* (1997) 57 Cal.App.4th 542, 547-549.) Failure to pursue a statutory bias claim will also bar a nonstatutory, constitutional bias claim. (*Brown*, at pp. 335-336; *Roth*, at pp. 547-549.)

We do not mean to imply that John's bias claim, if not forfeited, would have merit. It is not entirely clear what the trial judge did or did not do that supposedly demonstrated bias. After scouring John's brief, however, we have identified six incidents that he may be asserting as instances of bias.

First, when Marilyn sought a temporary restraining order (TRO), before trial, the trial court[2] ordered John to move out of the family home. At the time, however, John had counsel, and his counsel *agreed* to the move-out order: "I would be happy to try to work with counsel to try to get [John] to move in a reasonable period of time. Because I think it's reasonable that these people not be living together. They filed for divorce. It's time." She agreed that John could "be out within a week." The trial court accordingly so ordered. In every other respect, it *denied* a TRO.

[2] It is not even clear that this was the same judge who eventually presided over the trial. According to the reporter's transcript, it was the same judge. According to the clerk's transcript, however, it was a different judge.

Second, even though a TRO alleging physical abuse had been denied, the trial court allowed Marilyn to testify at trial that John had physically abused her. John, however, did not object to this testimony. Thus, the trial court was not called on to decide whether this was appropriate.

Third, the trial court did not read John's trial brief before proceeding to hear testimony. However, it treated Marilyn's trial brief the same way. Both briefs were submitted at the beginning of trial. The court was not required to take a recess — forcing the parties and the witnesses to cool their heels — while it read the trial briefs. We may assume that it read them as soon as it could.

Fourth, John claims the trial court admitted exhibits that Marilyn offered but excluded exhibits that he offered. He has not explained, however, how these rulings were erroneous; he has not shown that his exhibits were admissible or that Marilyn's were not. He even concedes that he did not object to at least some of Marilyn's exhibits.

Fifth, he claims the trial court "refus[ed to] protect[] [him] from [Marilyn's] lies on [the] stand . . . ." However, he does not cite any part of the record that supports this claim. (See Cal. Rules of Court, rule 8.204(a)(1)(C) [brief must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears"].) He also does not explain how the trial court was supposed to know that Marilyn was lying.

Sixth, John argues again that the property division was "detrimental" to him. As we have already held in part II, *ante*, he has failed to show that the trial court erred in this respect.

Finally, all six claims of bias must fail for an additional reason. "[M]ere judicial error is not conclusive evidence of bias or grounds for disqualification . . . ." (*People v. Superior Court (Dorsey)* (1996) 50 Cal.App.4th 1216, 1231 [Fourth Dist., Div. Two].) "We reject the notion that erroneous rulings, without more, may justify the removal of a trial judge from further proceedings in a case. . . . [T]he leap from erroneous rulings to the appearance of bias is one we decline to make." (*Blakemore v. Superior Court* (2005) 129 Cal.App.4th 36, 59-60.) Accordingly, even assuming John is correct, that falls short of showing that the trial judge was subject to disqualification.

IV

DISPOSITION

The judgment is affirmed. Marilyn is awarded costs on appeal (if any) against John.

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RICHLI
J.

We concur:

RAMIREZ
P.J.

KING
J.